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LONDON, PARIS, ROME FOR AFRICA WATCHER

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SUBJECT: ETHIOPIA: BENCH RULES CUD LEADERS MUST ANSWER
CHARGES

Classified By: ACTING POL-ECON COUNSELOR ERIC WONG. REASON: 1.4 (D).

11. (SBU) SUMMARY. In a series of rulings between April 4-9, the High Court dismissed charges of "attempted" genocide and treason against all defendants in the nearly year-long trial of opposition Coalition for Unity and Democracy (CUD) leaders, independent journalists and civil society representatives. However, the court also ruled that many defendants, including the CUD leadership, must answer other serious charges. The court acquitted 26 defendants in custody (7 journalists, 18 lower-level CUD members, and 1 civil society representative) and ordered them released from prison. Most of those being tried in absentia, many of whom reside in the U.S., were also acquitted. However, citing public statements critical of the federal government and the ruling EPRDF coalition, and statements questioning the neutrality of the National Electoral Board, the Court ruled that 49 of the most prominent defendants must remain on trial to answer charges including "Outrages against the Constitution," punishable in extreme cases by life imprisonment or death. Many defendants may change their previous strategy of not actively defending themselves. A defense, if mounted by each defendant, may extend the trial many more months. If they do not, this interim ruling becomes a de facto guilty verdict, and sentencing would follow. END SUMMARY.

TRIAL RESUMES, DRAMATIC FINISH DELAYED

12. (SBU) Following a nearly three-month break to allow the three-judge panel to evaluate the prosecution's year-long presentation of evidence, the trial resumed February 19. Local and diaspora media incorrectly reported that the court would issue a verdict. In fact, the bench was to rule on whether the prosecution presented sufficient evidence to warrant the defendants mounting a defense. After the long evaluation period, and nearly one year into the trial, the much-anticipated ruling faced further delays. In the first session, the bench simply asked the prosecution to have several pieces of evidence submitted last fall translated from English to Amharic. Anticipation by the international community, journalists, family members, and friends of the defendants remained high, with the courtroom packed for each session. The next two sessions on March 5 and March 23 were also anticlimactic, however. On March 5, the bench simply accepted the documents and said more time was needed to evaluate the evidence. On March 23, lead judge Adil inexplicably did not appear in court, leading to another

one-week adjournment.

¶3. (SBU) Defendants were notably upset at the repeated postponements. In separate sessions, defendant Bertukan Mideksa (a former high court judge) and Professor Mesfin Woldemariam protested at length that enough time had already been allowed to review the evidence, and that the bench should proceed. These and other defense objections were met with curt answers from the bench that the amount of evidence was vast, and that the case was complex.

¶4. (SBU) As was the case when the trial resumed following the summer break, upon entering the courtroom on February 19, defendants greeted each other warmly and spent several minutes exchanging pleasantries and catching up. Defendants appeared healthy; Post has not received any reports of any major new illnesses during the break. (NOTE: Post continues to work closely with the family of lead defendant Hailu Shawel to facilitate a South African eye specialist coming to Addis Ababa to treat him. END NOTE.)

RULING BEGINS WITH RECAP OF EVIDENCE

¶5. (SBU) On March 30, the bench commenced a three-day summary of every video, audiocassette, document, and witness presented by the prosecution. The judges repeated in detail what the prosecution claimed each article of evidence would prove, as well as what was demonstrated in the presentation. Despite a relatively extensive cross-examination of witnesses and several objections to the prosecution evidence raised by civil society representatives Daniel Bekele and Netsanet

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Demissie, the bench gave only a very brief review of defense efforts. During the course of testimony, several other witnesses had also attempted cross-examination. While this defense was occasional and often ineffective, the bench made no mention of it.

MOST MUST DEFEND 'OUTRAGES AGAINST CONSTITUTION'

¶6. (SBU) In the seventh session following reconvening, the bench finally began ruling on the first charge: &Outrages against the Constitution or the Constitutional Order.8 Over three days, the bench explained in detail their rulings on this charge, which all defendants faced. Judges declared that evidence was divided into three periods: 1) before the May 2005 election; 2) after the election and up to the June 2005 demonstrations; and 3) after the June demonstration through the November 2005 demonstrations. The bench said that the most convincing evidence were press statements and videos of CUD meetings and rallies, such as:

-- A December 2004 CUD rally at which Hailu Shawel said (as quoted by the judge) "no one can control or force the public.

(The people's) authority has been taken. Today we will begin toppling the government authorities from the lowest level to the highest."

-- A rally in Debre Markos at which defendant Befekadu Degife says, "the public would revolt against the Government, if it refused to give up power."

-- A February 8, 2005 CUD press release that said the National Election Board (NEB) is not an institution to solve problems in Ethiopia.

-- A CUD meeting at which Berhanu Nega noted that a peaceful struggle by the public could not be controlled.

-- A CUD meeting at which Hailu Shawel said, "The EPRDF is not willing to come out as a victim."

-- A CUD rally at which Gizachew Shiferaw said, "The NEB is an organ of the EPRDF and is not independent."

-- A press conference at which Mesfin Woldemariam said, "What happened in Ukraine will happen in Ethiopia."

-- Adil also noted 'pre-election' reporting in newspapers stated that the May 2005 elections would be rigged (by the EPRDF), that a Ukrainian revolution would then follow, and that the public should be prepared.

¶17. (SBU) The bench also recalled evidence presented relating to June 2005 demonstrations, claiming that police videos showed large groups of protestors displaying the CUD hand sign, chanting that the EPRDF lost the election and that the CUD won, and carrying machetes, clubs or knives. The videos also showed the widespread violence that took place and the resulting loss of property and life, according to the bench.

¶18. (SBU) "The CUD press releases, public gatherings and newspaper articles (which were submitted as evidence) encouraged the public to engage in violence and to not trust the NEB and the judicial system," Adil said. Pre-election communication had biased the public to believe that the election would be rigged by the EPRDF, he explained. Adil said that it could therefore be determined that the action of the CUD leadership had a direct effect on the June violence, and that their actions created the expectation that the election would be rigged. CUD leadership made repeated calls for "public violence similar to what took place in Ukraine," Adil said, but he declared that, "What happened in Ukraine does not reflect our situation in Ethiopia." These statements motivated people disgruntled with the election and "convinced them to commit illegal acts," he summarized.

¶19. (SBU) The agitation of the public by CUD leaders continued between the June and November 2005 demonstrations, Adil added, citing many CUD meetings shown by video evidence. "Though meetings were allegedly meant to discuss whether or not to join parliament, the real agenda was that the current regime needs to be overthrown forcibly," he opined. This was compounded by the CUD's insistence that the NEB and judiciary be reformed. Adil said that this showed the connection between those in the CUD leadership to those in the media who held similar beliefs. It was "crystal clear" that the EPRDF won the elections, but the CUD tried to topple the government anyway by motivating people, as happened in "violent revolutions in Ukraine and Georgia." "The demonstrations in

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June and November were targeted at individuals and government organizations in an attempt to overthrow the government," Adil concluded.

¶10. (SBU) Of the 111 eleven defendants that faced charge number one, 57 were told that they must present a defense. This included all of the members of the CUD Supreme Council, who the bench found to have acted in conspiracy via the issuance of official CUD press statements. Others who must answer the charge include human rights activist Mesfin Woldemariam, civil society representatives Daniel Bekele and Netsanet Demissie, and several journalists. Of those acquitted, the bench said that there had not been sufficient evidence to convince them that the defendants had directly participated in a crime or were connected to the conspiracy to do so.

GENOCIDE AND TREASON DROPPED

¶11. (SBU) While the explanation of the first charge lasted three days, the bench's ruling on the remaining 5 charges took less than one hour. On the second charge, "Obstruction of the Exercise of Constitutional Powers," the bench said evidence presented by the prosecution in the form of CUD press releases and public statements showed that calling for stay-at-home strikes intended to bring economic crisis upon Ethiopia. Defendants also committed defamation and "threatened the existence" of the NEB by stating that it was not impartial, judges said. In the end, there was no evidence to support this charge against lower-level CUD

members, but the members of the CUD Supreme Council must present a defense, as it was their press releases that were deemed damaging by the bench.

¶12. (SBU) Regarding the third charge, "Inciting, Organizing or Leading Armed Rebellion," Adil said witness testimony showed that defendants Hailu Shawel, Abayneh Berhanu, Getachew Mengiste, Mamushet Amare, and Tesfaye Tariku were organizing an armed struggle against the government. "They were attempting to arm a group of bandits to attack government forces," he said. "Though some others in the CUD Supreme Council may have supported armed struggle," he said, "there was no official publications from them to prove this." Therefore, only these defendants must answer the third charge, while others are acquitted. (NOTE. The fourth charge, "Endangering the Integrity of the State," was dropped in March 2006 before the trial began. END NOTE.)

¶13. (SBU) In discussing evidence supporting the fifth Charge, "Impairing the Defensive Power of the State," the bench claimed videos of the June and November violence showed that the CUD provoked and incited people to attack the Ethiopian defense forces. In particular, Adil recalled that military vehicles had been burned. Therefore, the top ten CUD leaders, who were active in meetings and rallies from which demonstrators were allegedly incited, must answer the charge. Additionally, journalist Mesfin Tesfaye had published a newspaper article stating that the military would stand by the side of the people and not the government, in the case of a clash. This shows provocation, Adil said, ordering Mesfin to answer the charge, while acquitting all other defendants of this charge.

¶14. (SBU) Though the prosecution presented evidence in the form of witnesses and documents that claimed the CUD had cooperated with Eritrea and "other forces against the Ethiopian government," the bench could not conclude by majority that there was a link between the Ethiopian Patriotic Front, the Eritrean government, and the CUD leadership. Therefore, all defendants were acquitted of the sixth charge, "High Treason."

¶15. (SBU) Similarly, four witnesses had testified that they were attacked during the June and November 2005 demonstrations simply because they were Tigrayans. However, "CUD public provocation was aimed at attacking the constitutional order and focused on the government, rather than an ethnic group," Adil said. He added that, had the violence lasted longer it may have become genocide, but as it stands, there is no proof that the CUD incited ethnic hatred. He said that by a majority vote, the bench acquitted all

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defendants on the seventh charge: "Attempted Genocide." Following the reading of all the charges, second judge Leoul announced his dissenting opinion on the sixth and seventh charges. He concluded that the evidence had clearly shown a link between the CUD, the Ethiopian Patriotic Front, and the Oromo Liberation Front, and by connection the Eritrean government, which is a "hostile threat against Ethiopia."

26 DEFENDANTS TO FINALLY LEAVE KALITI

¶16. (SBU) Following the reading of all the charges, the bench identified 26 defendants acquitted on all charges and ordered them released that day, after nearly a year-and-a-half in prison. These included 7 journalists and several lower-level CUD members. Nearly all those being tried in absentia also had their entire cases dropped. This leaves 49 defendants who remain in prison and who must present a defense. (NOTE: Possible penalties for the remaining charges all include long imprisonment or death. Charge 1 is punishable by 3 -25 years imprisonment, or when the crime has entailed serious crises against public security or life, life imprisonment or death.

Charge 2 is punishable by up to 15 years imprisonment; charge 3: life imprisonment or death; and charge 5: 5-25 years, or in cases of exceptional gravity, life imprisonment or death. END NOTE)

COMMENT: LITTLE APPARENT SCRUTINY FROM BENCH;
LEADERS MAY NOW DEFEND

¶17. (C) Most international observers agreed that the interim ruling took on much more of the tone of a verdict, though Post believes that the judgment is far from final. In their statement, the judges frequently used many of the same phrases the prosecution had used to explain why a particular piece of evidence was proof of guilt. They frequently stated, particularly on the first charge, that the body of evidence shows that the defendants committed a crime, which suggests a decision of guilt has already been made. In only a few cases did the bench show any misgivings about prosecution evidence, despite numerous inconclusive videos, documents of questionable validity, and witness who frequently contradicted themselves and otherwise were not credible. Though most defendants made no attempt to cross-examine witnesses, the bench gave the extensive defense by civil society representatives Daniel Bekele and Netsanet Demissie little credit, despite the fact that observers were unanimous that they had thoroughly addressed each piece of evidence presented against them. Those who were released had little or no evidence presented against them at all.

¶18. (C) Most observers who are suspicious of GoE interference predicted the outcome as it occurred: the more provocative charges of genocide and treason would be dropped, some lower-level defendants released, while the more vaguely defined "Outrages against the Constitution" would be used to keep CUD leaders in jail. Despite that most in the international community foresaw with some accuracy the ruling, many of the defendants, including the leadership, and their families were visibly surprised at the ruling. While all but three defendants had chosen not to defend themselves, because they "do not recognize the authority of the court," they are now rethinking their strategy. Whether this is a last-ditch effort to prevent what would almost surely become lengthy jail sentences or a prolonging of the trial, or simply an attempt to discredit the court by effectively addressing the evidence, is unclear. As the remaining defendants include several former attorneys and at least one former High Court judge, they are quite capable of mounting a strong defense against what is inarguably a weak case by the prosecution. (NOTE: EU observers allege that prosecutors privately concede their case was not very strong. END NOTE.) Post will remain in contact with family members and friends of defendants in order to gain insight into their plans.

¶19. (C) How the bench's decision affects sensitive efforts underway by Ethiopian elders to broker a negotiated settlement between the CUD leaders and the GOE (reftel) remains to be seen. Negotiations have been in progress for many months, but currently center on arriving at language

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from the detainees that would be acceptable to the GoE in which they state their complicity in circumventing the constitution. This ruling may provide impetus for the detainees to come to an agreement, by underscoring that otherwise many may face long imprisonment. Alternatively, it may simply strengthen their resolve and enhance their position as martyrs for the Ethiopian political opposition. The elders' ability to find a solution in the coming weeks will have a major influence on the future of Ethiopian domestic politics. END COMMENT.
YAMAMOTO